

# DECISION



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THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE: B-211450, B-211569

DATE: July 7, 1983

MATTER OF: Contract Services Company, Inc.

## DIGEST:

1. Protester is an interested party under GAO protest procedures when it asserts that it would have submitted bid but for alleged defects in the solicitation's requirements.
2. Protest of alleged solicitation defects filed before bid opening is timely under Bid Protest Procedures.
3. Requirement that parts and materials be supplied by Government and purchased through Federal Supply Service, rather than allowing contractor to purchase parts commercially from its own sources, is reasonable where agency has existing Federal Supply Schedule contracts for the supplies and contractor is not required to pay for them.
4. Requirement that fuel for operation and maintenance of vehicles is to be purchased from Government is reasonable where requirement provides incentive for contractor to use fuel efficiently.
5. Where solicitation provides estimate of quantity of fuel used annually and cost of fuel per gallon, bidder has sufficient basis to prepare overall fuel costs for bid.

Contract Services Company, Inc. (CSC), protests provisions in invitations for bids (IFB) Nos. N62472-82-B-5482 and N62477-82-C-7087 issued by the Department of the Navy for operation and maintenance of transportation equipment at the Naval Air Development Center (NADC), Warminster, Pennsylvania, and the Naval Ordnance Station (NOS), Indian Head, Maryland, respectively. The IFB's were issued as part of cost comparisons conducted under Office of Management and Budget (OMB) Circular A-76 to determine whether it is less expensive to contract out the work instead of continuing in-house performance.

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CSC alleges that the NADC IFB improperly requires that parts be purchased from the Federal Supply Service rather than permitting the contractor to solicit its own parts and include them as part of its firm, fixed price. In its view, the latter approach is more consistent with the intent of Circular A-76. Also, CSC contends that bidders are at a disadvantage because bidders have not been provided the General Services Administration price schedule to determine the amounts they must pay for parts.

With regard to the NOS IFB, CSC protests the requirement that the bidder purchase fuel from the Navy, alleging it is inconsistent with the intent of Circular A-76 because it requires a contractor to purchase from a single source at a fixed price instead of permitting a contractor to bid on the basis of possibly less expensive fuel prices available to it. CSC also argues that the contractor does not have sufficient historical data to estimate fuel costs which would include the fuel costs for vehicles it does not operate, but only maintains.

We deny the protests.

Initially, the Navy argues that CSC's protest against the provision under the NADC IFB that parts be supplied through Government purchasing procedures is untimely. CSC protested this issue, which involves an alleged impropriety in the IFB, on April 22, 1983, before bid opening on May 3, 1983, and, therefore, it was timely filed under our Bid Protest Procedures. 4 C.F.R. § 21.2(b)(1) (1983).

With regard to the merits, we find no basis to object to the requirement that parts be purchased through the Federal Supply Service. CSC asserts that this provision restricts competition by requiring the purchase of parts from one source and by preventing the contractor from obtaining its supplies from other less expensive sources. In essence, CSC objects to the Navy's decision to procure the parts under existing contracts achieved by competition. We find the Navy's decision in this regard is reasonable. Circular A-76 does not require that any particular portions of a commercial and industrial activity currently operated

or managed by the Government must be covered by the cost comparison solicitation. Here, the Government has existing contracts for the supplies and it is reasonable under the current contracts, that the Navy satisfy its needs through the current contracts. In addition, the Navy concluded that Department of Defense regulations "require priority use of the Federal Supply System before other means." See, generally, Defense Acquisition Regulation § 5-100, et seq. (Defense Procurement Circular No. 76-12, October 28, 1977). Accordingly, the Navy's decision not to permit bidders to bid prices on parts is reasonable. See Optimum Systems, Inc., B-194984, B-195424, December 7, 1979, 79-2 CPD 396; CompuServe, B-188990, September 9, 1977, 77-2 CPD 182.

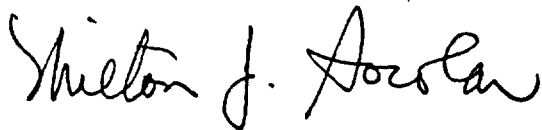
Also, CSC's contention that the IFB should have listed the prices of the parts is without merit, since, under the IFB, the Government pays for the parts and materials and the contractor is not required to reimburse the Government for parts and materials.

With regard to CSC's protest against the NOS IFB, the Navy notes that CSC did not submit a bid under this IFB and, therefore, contends that CSC is not an interested party under our Bid Protest Procedures. We disagree. Essentially, CSC contends it was prevented from submitting a bid because of restrictive specifications. Presumably, if we were to sustain its protest, it could be granted relief which would permit it to bid. In such cases, we have held the protester has a substantial enough economic interest at stake to be considered an interested party under our Bid Protest Procedures, 4 C.F.R. § part 21 (1983). See S.A.F.E. Export Corporation, B-207655, November 16, 1982, 82-2 CPD 445.

Under the NOS IFB, CSC protests that the IFB improperly provided fuel as a Government-furnished item. In essence, CSC alleges the requirement that contractors purchase Navy-procured fuel is restrictive and inconsistent with the Circular A-76 requirement for competitive bidding from the private sector.

In this connection, we have stated that the propriety of the inclusion of Government-furnished supplies in a solicitation includes a question of minimum needs. Optimum Systems, Inc., supra; CompuServ, supra. Our Office will not object to an agency's determination of its minimum needs unless the determination is clearly shown to have no reasonable basis. Here, the Navy explained that the fuel charge was included to provide an incentive for the contractor to perform operation and maintenance functions required under the contract in a fuel efficient manner. While CSC contends that this approach will not provide an incentive for fuel economy since not all vehicles are operated by the contractor, we believe that, under a contract for operation and maintenance of transportation, charging the contractor for fuel consumption is reasonably related to a policy of emphasizing fuel efficiency where the contractor may have primary control over fuel consumption. Furthermore, Circular A-76 does not require that the Navy permit the contractor to competitively bid the fuel.

CSC also alleges that the Navy did not provide historical data for fuel usage and, therefore, this portion of the work cannot be estimated. However, the price of fuel was provided; the IFB contained the fuel costs per gallon the contractor would be charged. Also, the IFB contained the current annual quantity of fuel used. Thus, the annual cost of fuel could be estimated from the data in the IFB. Furthermore, under the IFB, bidders were invited to visit the activity and inspect the "history jackets" for the vehicles and equipment which would have provided basic information useful to estimating a particular vehicle's fuel consumption. Thus, we find this allegation to be without merit.

*for*   
Comptroller General  
of the United States